

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
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FISCAL IMPACT STATEMENT

LS 6274

BILL NUMBER: HB 1618

DATE PREPARED: Jan 31, 2001

BILL AMENDED: Jan 30, 2001

SUBJECT: Blood and Breath Alcohol Concentrations.

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FUNDS AFFECTED: X GENERAL
X DEDICATED
X FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill has the following provisions:

(A) It reduces from 0.10% to 0.08% the percentage of alcohol concentration equivalent in a person's blood or breath that is necessary to constitute prima facie evidence of intoxication in a prosecution for operating a motor vehicle or watercraft while intoxicated. It reduces the range of percentages of alcohol concentration equivalent in a person's blood or breath that is necessary to constitute relevant evidence of intoxication in a prosecution for operating a motor vehicle or watercraft while intoxicated from at least 0.05% but less than 0.10% to at least 0.05% but less than 0.08%.

(B) It allows a court to defer the prosecution of a person who is arrested for operating a motor vehicle with an alcohol concentration in the person's blood or breath that is at least 0.08% but not more than 0.09% if the person meets certain conditions. It makes conforming amendments.

Effective Date: July 1, 2001.

Explanation of State Expenditures: Research suggests that lowering the percentage of alcohol concentration may increase the number of arrests made involving alcohol-related crimes, some of which are Class B, C and D felonies. The following are possible prison terms of these felonies:

<u>Felony</u>	<u>Prison Term</u>	<u>Avg Time Served</u>
Class B	6 to 20 years	3.5 years
Class C	2 to 8 years	1.9 years
Class D	6 mos. to 3 years	301 days

The following represents current DOC incarceration statistics for alcohol-related crimes. (Note: There have been no persons recently incarcerated for Class B felony- Driving While Intoxicated Resulting In Death.)

<u>Number of Individuals Incarcerated for Felony Crimes</u>	<u>FY 96</u>	<u>FY 97</u>	<u>FY 98</u>	<u>FY 99</u>	<u>FY 00</u>
Class D OWI (Repeat Offense)	540	599	510	558	997
Class D OWI Resulting In Serious Bodily Injury	17	18	14	18	16
Class C OWI Resulting In Death	28	20	17	26	23

The average expenditure to house an adult offender was \$20,700 in FY 1999. Individual facility expenditures range from \$14,936 to \$37,807. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner.

Explanation of State Revenues: (Revised) Decreasing the intoxication level necessary for prosecution may affect crimes chargeable with Class C infractions and Class C misdemeanors, as well as B, C and D felony crimes. If additional court cases occur, revenue to the state General Fund may increase if infraction judgments and court fees are collected. The maximum judgment for a Class C infraction is \$500 which is deposited in the state General Fund. The maximum fine for a Class C misdemeanor is \$500. The maximum fine for a Class B, C or D felony is \$10,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, county, or municipal court (courts of record), 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

If the criminal action or infraction involves a traffic violation, including this proposed offense, a highway work zone fee of either 50 cents or \$25.50 is assessed. The court may also impose an alcohol and drug counter measures fee of \$200. Revenue collected is deposited in the State User Fee Fund.

Effect on Federal Funding: (Note: The effect that Provision B would have on Indiana's eligibility for federal funds is currently not known. This fiscal note will be updated when this information becomes available.) This bill could impact federal transportation funding that Indiana is projected to receive as well as eligibility for impaired driving enforcement funds. First, if the .08 standard is not instituted by 2003, Indiana will lose 2% of its DOT dollars as a penalty in 2004, 4% in 2005, 6% in 2006, and 8% in 2007.

For Indiana, the amount to be lost in 2004 is not known since current federal funding laws do not extend beyond 2003. During the current funding year, Indiana received \$700 M in federal funding. Consequently, at today's funding level, the 2% penalty in 2004 would be \$14 M.

These federal funds could be reimbursed to Indiana if legislation is passed by 2007, but the funds are not recoverable if .08 legislation is not passed before 2007.

Indiana would also qualify for additional funds for highway safety enforcement. The following are estimates of the past and future federal safety grants which Indiana has either forfeited or will forfeit if the .08 legislation is not instituted.

<u>FY 1998</u>	<u>FY 1999</u>	<u>FY 2000</u>	<u>FY 2001</u>	<u>FY 2002</u>	<u>FY 2003</u>
\$3.1 M	\$3.0 M	\$3.5 M	\$4.3 M	\$4.9 M	\$5.4 M

Explanation of Local Expenditures: A Class C misdemeanor is punishable by up to 60 days in jail. If more defendants are detained in county jails due to misdemeanors or prior to their felony court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

Provision B: Some counties with court-appointed alcohol treatment programs could incur additional costs if the programs would have to serve more people if this bill results in additional deferrals.

Explanation of Local Revenues: (Revised) Provision A: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

Provision B: Whether this provision would increase the number of deferrals from prosecution for drivers without prior arrest records who test between .08 and .09 will depend on the policies of the prosecuting attorneys in each county. The number of additional persons who might be arrested for drunk driving at the level between .08 and .09 and between .09 and .10 was not able to be estimated.

Under current law, the percentage of drivers who received a deferral after being determined to be guilty of operating a vehicle with a blood concentration of .10 or more has been between 3% and 4% over the past six years. (The number of guilty persons in 2000 includes the months between January and November.)

<u>CY</u>	<u>Number of Drivers Found Guilty</u>	<u>Number of Drivers Deferred from Prosecution</u>	<u>Percentage of Deferrals</u>
1995	3,169	91	3%
1996	3,519	125	4%
1997	3,021	126	4%
1998	3,050	129	4%
1999	2,569	99	4%
2000 (Jan. - Nov.)	4,089	103	3%

State Agencies Affected: Department of Correction; Department of Transportation.

Local Agencies Affected: Trial courts; local law enforcement agencies; prosecuting attorneys offices.

Information Sources: Indiana Sheriffs Association; Department of Correction; Criminal Justice Institute; Bureau of Motor Vehicles.